(2)

No. 06-799

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

D.T.,

Petitioner,

v.

BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

BRIEF IN OPPOSITION

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COUNTER-STATEMENT OF THE CASE

This matter involves the dismissal of Petitioners' pro se appeal to the New Jersey State Board of Education due to Petitioners' repeated refusal to serve their appeal brief on the attorney for the Board of Education of the Bridgewater-Raritan Regional School District, Respondent below. The pertinent State administrative procedure regulations, as well as the State Board of Education's explicit direction, required the subject service.

Petitioners filed eight separate petitions of appeal with the Commissioner of the New Jersey Department of Education ("Commissioner") challenging disciplinary actions taken against their son (*e.g.*, son's suspension from riding the school bus) by the Board of Education of the Bridgewater-Raritan Regional School District ("Board"). The Commissioner dismissed the petitions and Petitioners filed appeals to the New Jersey State Board of Education ("State Board"). The appeals were consolidated and Petitioners filed a brief in support of their consolidated appeal.

The Director of the State Board Appeals Office ("Director") notified the Petitioners that neither the Board nor the Board's attorney had received a copy of Petitioners' appeal brief, despite the fact that Petitioners submitted a proof of service of their brief on the Board at its administration building. The Director informed Petitioners that they had the responsibility to provide a copy of their brief to the Board's attorney and specifically directed them to do so. The Director provided Petitioners with the Board's attorney's name and address. Petitioners refused to serve the Board's attorney, insisting to the Director that it was the Board's responsibility to forward all submissions to their attorney.

The Director again advised the Petitioners that it was their responsibility to serve a copy of their brief on the Board's attorney and directed them to do so. The Director warned that failure to comply with this requirement would result in the referral of the matter to the Legal Committee of the State Board for consideration of Petitioners' failure to perfect their appeal. Again, Petitioners refused to serve their brief upon the Board's attorney.

Ultimately, Petitioners never served their appeal brief on the Board's attorney. Consequently, the State Board dismissed Petitioners' consolidated appeal due to Petitioners' willful noncompliance with the procedural regulations.

The Petitioners appealed the dismissal to the Superior Court of New Jersey, Appellate Division ("Appellate Division"), which affirmed the decision of the State Board. Finally, the Petitioners submitted a Petition for Certification to the New Jersey Supreme Court, which denied certification.[1]

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1. Petitioners failed to include in their appendix, as required by Supreme Court Rule 14, the opinion of the New Jersey State Board of Education and the order of the New Jersey Supreme Court. Accordingly, these decisions are included in Respondent's appendix attached hereto.

LEGAL ARGUMENT

POINT I

THE PETITION FOR A WRIT OF CERTIORARI MUST BE DENIED BECAUSE THE UNITED STATES SUPREME COURT DOES NOT HAVE JURISDICTION.

The United States Supreme Court's certiorari jurisdiction over decisions from state courts derives from 28 U.S.C. § 1257, which provides that:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a). In the instant matter, Petitioners have challenged the application of procedural regulations to pro se litigants in an action before a state administrative agency. This dispute does not draw into question the validity of a federal statute or the validity of a state statute on the ground that it is repugnant to the Constitution, treaties, or laws of the United States. Rather, the controversy concerns the validity of certain state regulations governing procedure

before state administrative agencies. Further, Petitioners' federal claims were not presented to the state court below. Accordingly, the United States Supreme Court does not have jurisdiction to hear the instant matter.

A. The United States Supreme Court Does Not Have Jurisdiction Because the Instant Matter Does Not Draw Into Question the Validity of Any State or Federal Statute.

The instant matter exclusively involves a challenge to the application of state regulations to pro se litigants in an action before a state administrative agency. The Appellate Division and the State Board decided this mater entirely on the basis of state administrative procedure regulations. This matter does not implicate any state statute, federal statute or the federal constitution.

The State Board and the Appellant Division relied on New Jersey administrative procedure regulations and New Jersey Court Rules in their determination that the Petitioners' appeal to the State Board was properly dismissed for their persistent refusal to serve their brief upon opposing counsel. In pertinent part, the State Board discussed that the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 *et seq.*, governing service and filing of papers in contested cases before administrative agencies, provides that "[a]ny paper filed shall be served in the manner provided by (a) above upon all attorneys or other representatives and upon all parties appearing pro se, either before filing or promptly thereafter unless otherwise provided by order." N.J.A.C. 1:1-7.1(b). Moreover, the State Board noted that the administrative procedure rules were consistent with the rules governing practice in the New Jersey

courts which provide that briefs and other papers filed in civil actions "shall be served upon all attorneys of record in the action and upon parties appearing pro se. . . ." N.J. Ct. R. 1:5-1(a). The State Board determined that the Petitioners' repeated refusal to serve their brief on opposing counsel in violation of the administrative procedure rules warranted the dismissal of their appeal for failure to perfect.

The Appellate Division affirmed the decision of the State Board for the reasons espoused in the State Board's opinion. In addition, the Appellate Division contrasted N.J.A.C. 6A:3-8.1 on which Petitioners claimed to have relied. This regulation explicitly applies only to cases involving a child's entitlement to attend school and, in such matters, relieves pro se petitioners from serving the opposing party. The Appellate Division discussed that the underlying matter in this case concerned Petitioners' son's suspension from riding the school bus. Petitioners' son was not, at any time relevant to the instant matter, excluded from school. Thus, the Appellate Division explained that N.J.A.C. 6A:3-8.1 clearly did not apply to Petitioners' claim.

Based upon the above State regulations, both the State Board and the Appellate Division concluded that the Petitioners, although pro se, were required to follow the applicable procedural rules as other litigants and were obligated to serve their appeal brief on opposing counsel. The State Board and the Appellate Division noted that Petitioners' failure to do so was not the result of ignorance or mistake. Rather, the State Board repeatedly directed the Petitioners to serve opposing counsel in order to perfect their appeal, but Petitioners deliberately refused to do so. The State Board and Appellate Division concluded that the Petitioners' repeated refusal to serve opposing counsel in violation of the administrative procedure rules warranted the dismissal of their appeal for failure to perfect.

Thus, the determination of the Appellate Division and, consequently, the New Jersey Supreme Court's denial of certification, were based upon state administrative regulations and did not concern any state statute, federal statute or the federal constitution. Accordingly, the United States Supreme Court lacks jurisdiction under 28 U.S.C. § 1257 and the Petition for Writ of Certiorari should be denied.

B. The United States Supreme Court Does Not Have Jurisdiction Because the Federal Claims Were Not Presented to the State Court Below.

The Petitioners assert in their Petition for Writ of Certiorari that the procedural regulations under Title 6A and Title 1 of the New Jersey Administrative Code violate the No Child Left Behind Act and the Sixth and Fourteenth Amendments of the United States Constitution. However, these claims were not presented to the New Jersey Supreme Court. The United States Supreme Court does not have jurisdiction where the federal question has not been raised and decided in the state court below. *Illinois v. Gates*, 462 U.S. 213, 218, 103 S. Ct. 2317, 2322, 76 L. Ed. 2d 527 (1983). A petition can not raise for the first time on writ of certiorari an alleged constitutional violation where the state court had no opportunity to pass upon the issue. *Monks v. New Jersey*, 398 U.S. 71, 90 S. Ct. 1563, 26 L. Ed. 2d 54 (1970). It must be clear from the record that a claim under a federal statute or the federal constitution was presented to and addressed by the state court below. *Webb v. Webb*, 451 U.S. 493, 496, 101 S. Ct. 1889, 1892, 68 L. Ed. 2d 392 (1981). For example, references to due process requirements in Petitioners' brief to the Alabama Supreme Court were insufficient to establish that they had fairly raised that issue

in the state court when the court's decision did not address that issue. *Adams v. Robertson*, 520 U.S. 83, 88, 117 S. Ct. 1028, 1030, 137 L. Ed. 2d 203 (1997).

Petitioners never raised the No Child Left Behind Act claim or the Sixth Amendment claim before the State courts below. While Petitioners alluded to the Fourteenth Amendment in their brief before the Appellate Division, the Appellate Division did not address the issue and, moreover, the Petitioners did not raise the Fourteenth Amendment claim in their Petition for Certification to the New Jersey Supreme Court. Consequently, the New Jersey Supreme Court did not have occasion to consider any of these issues. Thus, the United States Supreme Court does not have jurisdiction to consider the Petitioners' claims regarding the No Child Left Behind Act and the Sixth and Fourteenth Amendments because these issues were not raised before the New Jersey Supreme Court. Accordingly, the United States Supreme Court should deny the petition for a writ of certiorari.

POINT II

THE UNITED STATES SUPREME COURT SHOULD NOT EXERCISE ITS DISCRETION TO GRANT THE PETITION FOR A WRIT OF CERTIORARI.

Pursuant to the United States Supreme Court Rules, review on a writ of certiorari is not a matter of right, but of judicial discretion. Sup. Ct. R. 10. A petition for a writ of certiorari will be granted only for compelling reasons. *Id*. The following indicates the character of reasons the United States Supreme Court considers in granting a writ of certiorari:

(a) a United States court of appeals has entered a decision in conflict with the decision of

> another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Id. Petitioners have not met the standard set forth under Rule 10 for granting a writ of certiorari because the New Jersey courts have not decided an important question of federal law. Rather, in the instant matter, Petitioners have challenged the application of procedural regulations to pro se litigants in an action before a state administrative agency. This dispute does not implicate an important or unsettled question of federal law. Thus, the United States Supreme Court should deny the petition for a writ of certiorari.

A. The United States Supreme Court Should Deny the Petition for a Writ of Certiorari Because the Matter Does Not Involve an Important Federal Question.

No important question of federal law is implicated in this matter. As discussed in Section I, A, above, the instant matter exclusively involves the application of state regulations to litigants in an action before a state administrative agency. The Appellate Division and the State Board decided this mater entirely on the basis of state administrative procedure regulations. This matter does not involve any federal law.

Moreover, this matter does not implicate any violation of federal constitutional rights as Petitioners have so vaguely asserted in their petition. Petitioners allege that the confusing nature of the state administrative procedure regulations has infringed upon their rights under the Sixth and Fourteenth Amendments to the United States Constitution. At the outset, it should be noted that the Sixth Amendment applies to criminal proceedings and, thus, is clearly not implicated in the instant matter. Further, this matter is certainly not a case of a pro se litigant denied the opportunity to bring forth a potentially meritorious claim due to the stringent application of complicated rules of procedure. To the contrary, this matter arises purely from the Petitioners' outright refusal to serve their brief upon counsel for the Board after repeated direction from the State Board to do so. The State Board exercised leniency with respect to the procedural rules and gave Petitioners every opportunity to perfect their appeal. Nevertheless, the Petitioners obstinately refused to comply with the State Board's direction. Under these facts, the Petitioners cannot now claim that their federal constitutional rights have been violated.

Finally, Petitioners have alleged that the state administrative procedure regulations do not comply with the No Child Left Behind Act. Petitioners have not cited to any provision of the No Child Left Behind Act in support of this claim. Furthermore, Petitioners do not provide a citation to the provision of the No Child Left Behind Act which they purportedly quote in their petition for writ of certiorari. We cannot discern any legal basis for Petitioners' claim with regard to the No Child Left Behind Act. The purpose of No Child Left Behind is to improve student academic achievement, hold schools accountable for pupil progress, increase the number of highly qualified teachers in the classroom, offer school choice options, provide supplemental educational services to meet the educational needs of all students, particularly at-risk youth, and to support state and local educational reform efforts. 20 U.S.C. § 6301; 20 U.S.C. § 6601; 20 U.S.C. § 7201. The No Child Left Behind Act has no relevance to the instant dispute which simply involves the application of state procedural regulations to litigants in an action before a state administrative agency. Moreover, Petitioners' underlying complaint in this matter did not involve any alleged violation of the No Child Left Behind Act. Accordingly, since this matter does not present an important federal question, the United States Supreme Court should deny the petition for a writ of certiorari.

B. The United States Supreme Court Should Deny the Petition for a Writ of Certiorari Because Federal Law is Well-Settled on this Issue.

It is well-settled across the federal circuits that pro se litigants are not absolved from compliance with the relevant rules of procedure. *Martinez-McBean v. Government of Virgin Islands*, 562 F.2d 908, 912 (3d Cir. 1977); *Birl v. Estelle*,

660 F.2d 592, 593 (5th Cir. 1981); *Carter v. C.I.R.*, 784 F.2d 1006, 1008 (9th Cir. 1986); *King v. Atiyeh*, 814 F.2d 565, 567 (2d Cir. 1987); *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989); *DiCesare v. Stuart*, 12 F.3d 973, 979 (10th Cir. 1993); *Eagle Eye Fishing Corp. v. U.S. Dep't of Commerce*, 20 F.3d 503, 506 (1st Cir. 1994); *Jones v. Phipps*, 39 F.3d 158, 163 (7th Cir. 1994); *Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 856 (8th Cir. 1996). In fact, the United States Supreme Court has indicated that the right of self-representation is not "a license not to comply with relevant rules of procedural and substantive law." *Faretta v. California*, 422 U.S. 806, 834 n.46, 95 S. Ct. 2525, 2541, 45 L. Ed. 2d 562 (1975).

As previously discussed, the State Board of Education in this matter afforded Petitioners multiple opportunities to cure their deficiency. The State Board repeatedly instructed Petitioners as to the requirement that they serve their appeal brief on opposing counsel and provided Petitioners with opposing counsel's name and address. Nonetheless, the Petitioners obstinately refused to abide by the State Board's direction. The State Board afforded Petitioners every opportunity to ensure that they perfected their appeal. There has been no miscarriage of justice here. The Petitioners must accept the consequences of their recalcitrance. Accordingly, since this matter does not implicate an important, unsettled question of federal law, the United States Supreme Court should deny the Petition for Writ of Certiorari.

CONCLUSION

For the foregoing reasons, Respondent, Board of Education of the Bridgewater-Raritan Regional School District, respectfully requests that the United States Supreme Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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